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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

DATE: JAN 24 2014

OFFICE: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

IN RE:

Petitioner: [REDACTED]

Beneficiary: [REDACTED]

PETITION: Petition for a Nonimmigrant Worker under Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:

SELF REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg

Chief, Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The petitioner filed this nonimmigrant petition seeking to classify the beneficiary as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner, a limited liability company established in 2012, states that it intends to operate a travel agency. The petitioner claims to be an affiliate of [REDACTED] located in Russia. It seeks to employ the beneficiary as the chief executive officer of its new office for a period of two years.<sup>1</sup>

The director denied the petition, concluding that the petitioner failed to establish that it has a qualifying relationship with the foreign entity.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, the petitioner asserts that the director failed to consider all of the evidence submitted and erroneously concluded that the petitioner and foreign entity do not have an affiliate relationship. The petitioner submits a brief statement and a copy of its limited liability company operating agreement.

### I. The Law

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.

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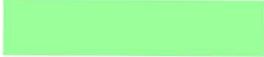
<sup>1</sup> The L Classification Supplement to the Form I-129 indicates that the instant petition seeks to classify the beneficiary as an L-1A intracompany transferee as a managerial or executive employee of a "new office." Pursuant to 8 C.F.R. § 214.2(l)(7)(i)(A)(3), if the beneficiary is coming to the United States to open or be employed in a new office, the petition may be approved for a period not to exceed one year.

- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

The regulation at 8 C.F.R. § 214.2(l)(3)(v) further provides that if the petition indicates that the beneficiary is coming to the United States as a manager or executive to open or to be employed in a new office in the United States, the petitioner shall submit evidence that:

- (A) Sufficient physical premises to house the new office have been secured;
- (B) The beneficiary has been employed for one continuous year in the three year period preceding the filing of the petition in an executive or managerial capacity and that the proposed employment involved executive or managerial authority over the new operation; and
- (C) The intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as defined in paragraphs (l)(1)(ii)(B) or (C) of this section, supported by information regarding:
  - (1) The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals;
  - (2) The size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; and
  - (3) The organizational structure of the foreign entity.

The pertinent regulations at 8 C.F.R. § 214.2(l)(1)(ii) define the term "qualifying organization" and related terms as follows:



(G) *Qualifying organization* means a United States or foreign firm, corporation, or other legal entity which:

- (1) Meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (I)(1)(ii) of this section;
- (2) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate or subsidiary for the duration of the alien's stay in the United States as an intracompany transferee[.]

\* \* \*

(I) *Parent* means a firm, corporation, or other legal entity which has subsidiaries.

\* \* \*

(K) *Subsidiary* means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.

(L) *Affiliate* means

- (1) One of two subsidiaries both of which are owned and controlled by the same parent or individual, or
- (2) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity.

**II. Qualifying Relationship**

The sole issue addressed by the director is whether the petitioner established that it has a qualifying relationship with the beneficiary's foreign employer.

On the Form I-129 L Supplement, the petitioner stated that it has an affiliate relationship with the foreign entity, [REDACTED]. Specifically, the petitioner stated that the beneficiary owns 100% of both the companies.

To establish ownership of the foreign entity, the petitioner provided the following documents in Russian with certified English translations:

- A "List of Affiliates" for [REDACTED] which identifies the beneficiary as President, Chairman of the Board of Directors and sole shareholder of the Russian entity;
- The minutes of an Extraordinary General Meeting of Shareholders for [REDACTED] dated October 14, 2012, in which the beneficiary, as sole shareholder approved the establishment of an affiliate in the United States;
- The foreign entity's Russian tax registration certificate dated July 29, 2011, and its charter, which indicates that it is authorized to issue 100 shares with a nominal value of 100 rubles per share;
- A "Certificate of Availability of Shares" dated October 15, 2012 which identifies the beneficiary as the owner of 100 shares of [REDACTED] representing 100% of the company's authorized capital.
- A stock sales agreement indicating that the beneficiary agreed to purchase the foreign entity's shares from its previous sole shareholder on January 17, 2012 for 10,000 rubles.
- A stock transfer order executed by the seller and the beneficiary.

To establish the ownership of the U.S. company, the petitioner submitted:

- Its Articles of Organization, which identify the beneficiary as the sole member of the company.
- The minutes of the petitioner's organizational meeting held on October 20, 2012, which identify the beneficiary as the sole member and owner of the company. The meeting minutes indicate that "the complete LLC operating agreement was satisfied and "the initial capital contributions of the operating agreement were agreed . . . and the company was funded according to the operating agreement details."
- The company's profile maintained in the on-line public records of the Nevada Secretary of State, which identifies the beneficiary as the company's sole officer and managing member.

The director issued a request for evidence (RFE) on February 20, 2013. The director advised the petitioner that the submitted documentation did not establish the beneficiary's ownership or control of either company, and provided a list of suggested additional evidence that the petitioner could provide to establish the qualifying relationship.

In response, the petitioner emphasized that it had provided evidence of the beneficiary's ownership and control of both entities, including several types of evidence as suggested in the RFE. The petitioner submitted additional evidence pertaining to the beneficiary's ownership of the foreign entity and explained how the evidence previously submitted establishes the beneficiary's ownership of the U.S. company.

The director ultimately denied the petition finding that the petitioner failed to establish that it has a qualifying relationship with the foreign entity. Specifically, the director found that the petitioner did not provide direct evidence that the beneficiary supplied the initial capital to the petitioning entity.

On appeal, the petitioner submits a brief and a copy of the petitioner's operating agreement which identifies the beneficiary as the sole member and indicates that he provided the capital contribution to the U.S. company. The petitioner acknowledges that its original business plan states it would be formed as a subsidiary of the foreign entity; however, the petitioner claims that due to the complexity in transferring the initial capital from the foreign entity, the U.S. company was formed as an affiliate. The petitioner asserts that the beneficiary's 100% ownership in both the foreign entity and the U.S. company creates a qualifying affiliate relationship.

Upon review, the petitioner's assertions are persuasive. The petitioner has provided sufficient evidence to establish that the beneficiary owns and controls the petitioner and the foreign entity as sole shareholder of both companies. In addition to the corporate documents listed above, the petitioner provided Russian and U.S. bank statements showing corresponding withdrawals and deposits in October 2012 sufficient to establish the origins of the petitioner's initial capital. Upon review of the record as a whole, the petitioner has established by a preponderance of the evidence that it has a qualifying relationship with the foreign entity. Accordingly, the AAO will withdraw the director's decision and sustain the appeal.

### III. Conclusion

In visa petition proceedings, the petitioner bears the burden of proving eligibility for the benefit. Section 291 of the Act, 8 U.S.C. § 1361; *see also Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (the petitioner must prove eligibility by a preponderance of evidence). Here, the petitioner has sustained that burden.

**ORDER:** The appeal is sustained.